

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

L2

[REDACTED]

FILE:

[REDACTED]

Office: NEW YORK

Date:

AUG 09 2010

IN RE: Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application based on the determination that the applicant was ineligible to adjust to permanent resident status under the provisions of the LIFE Act. The director found that the applicant had not established by a preponderance of the evidence that he had continuously resided in the United States in an unlawful status for the duration of the requisite period. Specifically, the director noted that the applicant failed to submit sufficient evidence of his entry to the United States prior to January 1, 1982 or his continuous residence in the United States throughout the relevant period.

On appeal, the applicant indicates that the director's decision is based on assumption and speculation. He asserts that he was not afforded a legalization interview prior to the denial of his case and requests oral arguments before the AAO.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Following *de novo* review, the AAO finds that the applicant has failed to establish his continuous residence in the United States from January 1, 1982 through the end of the relevant period.

An applicant for permanent resident status must establish entry into the United States before January 1, 1982 and continuous residence in the United States in an unlawful status since such date and through May 4, 1988. Section 1104(c)(2)(B) of the LIFE Act and 8 C.F.R. § 245a.11(b).

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States under the provisions of section 212(a) of the Act, and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and, identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant or petitioner has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

First, the applicant asserts on appeal that he was not afforded a legalization interview prior to the denial of his case and requests oral arguments before the AAO.

The applicant asserts that he was not accorded his legalization interview, however, he provides no evidence to support his assertion. The applicant asserts that he appeared for his interview, but the interviewing officer was unable to find the file, and indicated that the interview would be rescheduled.

The record contains no evidence to support the assertion that the legalization interview did not take place or that the interviewing officer indicated that the applicant's legalization interview would be rescheduled. That the applicant signed a record of sworn statement on July 27, 2005 in the presence of an officer of United States Citizenship and Immigration Services (USCIS) appears to indicate that he was interviewed on that date.

The contention emphasized on appeal is that the applicant must be accorded an interview. This office finds that he was accorded an interview and is not entitled to another. The applicant requests oral arguments before the AAO in lieu of another interview.

The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the applicant failed to identify any unique factors or issues of law to be resolved. In fact, the applicant set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The remaining substantive issue in this proceeding is whether the applicant has established that he (1) entered the United States before January 1, 1982 and (2) has continuously resided in the United States in an unlawful status for the requisite period of time.

In a sworn affidavit dated January 2, 1990, the applicant stated that he first entered the United States on October 3, 1981. The Form I-687, filed by the applicant on May 11, 2005, required the applicant to list all of his employment in the United States since his entry. The applicant stated that he worked at the Penington (sic) Hotel in New York City from January 1982 to March 1992 as a porter/doorman/desk clerk. The applicant also stated that he lived at [REDACTED] from October 1981 to October 1982, and at [REDACTED] which is in Astoria, New York, from November 1982 to October 1989.

The evidence in the record is described below.

- The record contains a notarized letter dated May 1, 2004 from the Curry and Tandoor Restaurant, in New York City, signed by [REDACTED] position at that restaurant, if any, is not stated in the letter. That letter states that the applicant worked in that restaurant as a part-time kitchen helper from December 1981 through October 1989.

The requirements for employment verification letters at 8 C.F.R. § 245a.2(d)(3)(i) are listed above. The letter from [REDACTED] does not comply with all, nor any, of those requirements. Because it is a relevant document, the employment verification letter provided will be considered pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). It will be accorded less weight, however, than if it conformed to the requirements of 8 C.F.R. § 245a.2(d)(3)(i).

Further, on the Form I-687 application, which the applicant signed on April 21, 2005, the applicant was required to list all of his employment in the United States since his first entry. The applicant did not list any employment at the Curry and Tandoor restaurant on that application. This casts additional doubt on the veracity of this employment claim. This employment verification letter will be accorded no evidentiary value.

Further still, doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. The applicant must resolve any inconsistencies in the record with competent, independent, objective evidence. Attempts to explain or reconcile such inconsistencies, absent competent objective evidence sufficient to demonstrate where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). This additional employment claim, not mentioned on the Form I-687 application, casts doubt on the balance of the evidence in the record.

- The record contains a notarized letter, dated May 11, 2004, from [REDACTED] of Ozone Park, New York, an acquaintance of the applicant. That letter states that [REDACTED] has known the applicant since his arrival in the United States during December 1981. This office notes that the applicant stated, in his sworn affidavit of January 2, 1990, that he arrived in the United States on

October 3, 1981, rather than during December. Because of this contradiction the letter of [REDACTED] would be accorded little credibility. The additional doubt cast on the letter by the anomalies in the May 1, 2004 letter of [REDACTED] reduces the credibility such that it will be accorded no evidentiary value.

- The record contains an affidavit from [REDACTED] that is dated May 13, 2004. In that affidavit [REDACTED] stated that the applicant has been in the United States since December 1981. [REDACTED] stated that the applicant worked as a construction laborer “and also as a part-time kitchen helper in my previous restaurant at [REDACTED] during the period of 1981 thru 1989.”

This office notes that [REDACTED] May 1, 2004 letter, on the letterhead of the Curry and Tandoor restaurant, gave the address of that restaurant as [REDACTED] Why [REDACTED] who claimed on May 13, 2004 that the Curry and Tandoor was his former restaurant, rather than his current restaurant, was, on May 1, 2004, issuing employment verification letters on Curry and Tandoor letterhead, is unknown to this office.

Further, as was noted above, the applicant was required to list all of his employment since coming to the United States on his Form I-687. The applicant did not list any construction work on that form. This additional employment claim, not mentioned on the Form I-687 application, casts doubt on the veracity of [REDACTED] affidavit and on the veracity of the balance of the evidence in the record. The May 13, 2004 affidavit of [REDACTED] will be accorded no evidentiary value.

- The record contains a letter, dated May 14, 2004, from [REDACTED], an acquaintance of the applicant. In that letter [REDACTED] states that he has known the applicant “since his arrival in New York around November, 1981,” and that the applicant now lives in the United States permanently. That letter does not indicate whether the applicant has been absent from the United States since his arrival or for how long. The other questionable evidence submitted diminishes the credibility of that letter. That letter is accorded very little evidentiary weight, and only as support for the proposition that the applicant entered the United States during late 1981.
- The record contains a letter, dated June 13, 1994, from [REDACTED] the manager of the Pennington Hotel in New York City. [REDACTED] stated that she has known the applicant since 1981, presumably in the United States, and that he worked in construction as necessary and worked for her hotel first as a part-time porter from 1982 to December 1989 and subsequently as a security guard. Although a notary placed his stamp on that letter, he did not indicate that the declarant swore to the contents of the letter.

Although this letter states that the applicant worked in construction after moving to the United States, the applicant mentioned no such employment on the Form I-687, where he was required to list all employment in the United States since he first arrived. Further, for a

notary to place his stamp on a letter but not attest that the contents were sworn to is very irregular.

Because of the damage to the credibility of [REDACTED] letter caused by the contradiction between that letter and the Form I-687, the irregularity in the notary's attestation, and the general damage to credibility occasioned by all of the other questionable evidence in the record, this office accords [REDACTED] June 13, 1994 employment verification letter no evidentiary weight.

- The record contains a letter, dated May 29, 2006, from [REDACTED] an acquaintance of the applicant. Photocopies of a cancelled check and a deposit slip showing that the declarant was then in the United States accompany the letter. The letter states that the declarant met the applicant in New York City when the applicant moved to the United States during 1981. The declarant further stated that he met the applicant on various religious occasions and helped him to find employment. Because of the anomalies in the other evidence presented, that letter is accorded very little evidentiary weight.
- The record contains another letter, also dated May 29, 2006, from [REDACTED] gave the same address as [REDACTED] in Ozone Park, New York. A receipt for license plates, issued on October 28, 1985 by the New York State Department of Motor Vehicles, accompanied that letter. That letter states that a [REDACTED] by which he apparently means [REDACTED] introduced the applicant to [REDACTED] during 1981 and asked [REDACTED] to help him find employment. Because of the anomalies in the other evidence presented, that letter is accorded very little credibility, and only as to the applicant's presence in the United States at some time during 1981.

The record contains no other evidence pertinent to the applicant's residence in the United States during the salient period.

In a Notice of Intent to Deny (NOID), dated June 25, 2009, the director observed that the applicant had not submitted sufficient credible evidence to demonstrate his entry into the United States prior to January 1, 1982 and his claim of continuous residence in the United States during the requisite period. On appeal, the applicant has not submitted any additional information, nor has he addressed the inconsistencies noted.

It is further noted that, on a G-325A Biographic Information form that the applicant signed on March 1, 2002, the applicant stated that his last address outside the United States was in Baridhara, Dhaka, Bangladesh, and that he lived there from August 1953 to November 1982. Thus, the applicant could not, consistent with that statement, have lived in the United States beginning before January 1, 1982.

Given the applicant's reliance upon documents with minimal probative value and the inconsistencies noted, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982 through the relevant period as required under section

Page 7

1104(c)(2)(B) of the LIFE Act. The applicant is, therefore, ineligible for permanent resident status under section 1104 of the LIFE Act on this basis.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.